STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN CRIMINAL DIVISION

CRIMINAL DIVISION
DOCKET NO.: 3506-10-17 Cncr

STATE OF VERMONT

V.

Aita Gurung, Defendant

NOTICE OF DISMISSAL

NOW COMES the State of Vermont, by and through State's Attorney, Sarah F. George Esq., and pursuant to V.R.Cr.P 48(a) hereby dismisses WITHOUT PREJUDICE the Information in the above captioned case. In support of this motion, the State offers the following:

1. On October 13, 2017, Defendant was charged with one count of Murder in the First Degree, a violation of 13 V.S.A. §2301, and one count of Attempted Murder in the First Degree, a violation of 13 V.S.A. §§ 9 and 2301. At his arraignment that same day, the Court, at the request of Defense counsel and based on a mental health screener's recommendation, ordered the Department of Mental Health [DMH] to conduct an inpatient psychiatric examination of Defendant to determine (1) whether he was mentally competent to stand trial for the offenses, and (2) whether he was insane at the time of the offenses. Defendant was remanded to the custody of DMH.
2. On December 14, 2017, pursuant to the Court's order, the parties received a report from Dr. Paul Cotton, a psychiatrist, in which he opined, based on a reasonable degree of medical certainty, that Defendant was competent to stand trial but insane at the time of the alleged offenses. Specifically, Dr. Cotton opined that Defendant was suffering from a mental disease,

Schizophrenia, at the time of the offenses. Schizophrenia, Dr. Cotton explained, is a substantial disorder that could significantly affect Defendant's judgment, behavior, and the ability to meet the ordinary demands of life. Dr. Cotton further explained that Defendant lacked adequate capacity to conform his conduct to the requirements of the law at the time of the alleged offenses due to his major mental illness. Dr. Cotton noted that there is evidence to substantiate the presence of disordered thought at the time of the alleged offenses that would have overridden Defendant's ability to conceptualize and weigh alternative courses of action.

3. Defense counsel filed a Notice of Insanity Defense on December 28, 2017, listing Dr. Cotton as their expert witness to support their insanity defense.

4. Given Dr. Cotton's opinion that Defendant was insane at the time of the offenses, the Court scheduled a commitment hearing pursuant to 13 V.S.A. §4820(1). At that hearing, Dr. John Malloy, a staff psychiatrist at the Vermont Psychiatric Care Hospital and Defendant's treatment provider since October 17, 2017, testified to his belief that Defendant suffers from an Unspecified Depressive Disorder and an Unspecified Psychotic Disorder. These disorders include depressive and psychotic symptoms that severely impact Defendant's thought processes and moods. The illnesses grossly impair Defendant's ability to judge, behave, and recognize reality. Dr. Malloy noted that when Defendant was first hospitalized, Defendant was severely psychotic and his ability to rationally perceive reality was substantially impaired. With treatment and medication, Defendant's psychosis diminished, but his symptoms of depression increased. According to Dr. Malloy, Defendant could not meet his needs and he was a danger to himself due to a high risk of suicide. The Court found, based on this testimony from Dr. Malloy, that Defendant suffers from major mental illnesses involving psychotic behavior and

depression. Further, the Court noted that the illnesses appear to have triggered the horrific killing of Defendant's wife and the attempted killing of his mother-in-law. In addition to being a danger to himself, the Court found that the behavior depicted in the filed charges illustrated the Defendant's dangerousness to others should treatment be discontinued. In accordance with 13 V.S.A. §4822 and 18 V.S.A. §§ 7619 and 7623, the Court committed Defendant to the care and custody of the Commissioner of Mental Health for an indeterminate period and hospitalization at a designated hospital for a period not to exceed 90 days.

5. The State subsequently retained Dr. Albert Drukteinis, a psychiatrist, to review the case and offer an opinion as to sanity. The Court, over Defendant's objection, granted the State's motion for a mental health examination pursuant to V.R.Cr.P. 16.1(a)(1)(I) and ordered Defendant to submit to a reasonable mental examination by Dr. Drukteinis.
6. In a report dated December 5, 2018, Dr. Drukteinis, like Dr. Cotton, opined that Defendant, at the time of the alleged offenses, lacked an adequate capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of law, as a result of a mental disease or defect; his actions were the product of insanity. Dr. Drukteinis noted that Defendant was experiencing psychotic thinking during his brief hospitalization that preceded the incidents on 10/13/17. He further noted that Defendant did admit and records appear to substantiate that voices were telling him to kill his wife and that he was afraid of those voices. Dr. Drukteinis explained that the video of Defendant's assault on his wife depicts a violent frenzy beyond anything that he exhibited before; it did not appear to have been planned and he was exhibiting complete abandon of inhibition. Coupled with the psychiatric history of Defendant's mental disorders, Dr. Drukteinis opined that Defendant's behavior must be understood as psychotic.

7. This case presents the issue of whether Defendant was criminally responsible at the time of the alleged offenses. Lack of criminal responsibility is commonly referred to as legal insanity. Before such a defense is considered, the State must prove each essential element of the offenses charged beyond a reasonable doubt. If the State meets this burden, it is Defendant's burden to prove by a preponderance of the evidence that he was insane at the time the crimes were committed and is therefore not criminally responsible. Proof by a preponderance of the evidence means that the defense is more likely than not true. This burden of proof is less than the burden of proof beyond a reasonable doubt.
8. Consequently, in order to obtain a conviction after an initial showing by defense that Defendant was legally insane at the time of the offenses, the State must rebut the issue of insanity with admissible evidence that tends to show Defendant was sane at the time of the alleged offense. The issue is then ultimately decided by a jury. However, if the State does not have sufficient evidence to rebut Defense counsel's evidence that Defendant was insane at the time of the offense, it is the State's belief that they have a prosecutorial duty not to go forward with the charge.
9. In this case, in light of the opinions of Dr. Cotton and Dr. Drukteinis, Defendant has substantial admissible evidence to prove by a preponderance of the evidence that he was insane at the time the crimes were committed and is therefore not criminally responsible. The State does not have sufficient evidence to rebut this insanity defense. Therefore, the State cannot meet its burden of proving the Defendant is guilty beyond a reasonable doubt; rather, the evidence shows that Defendant was insane at the time of the alleged offenses.
10. Further, Defendant is currently in the custody of DMH and has been since October of 2017. The Commissioner of DMH confirmed that it makes no difference to DMH, as far as treatment and discharge determinations, whether Defendant is found not guilty by reason of insanity after a trial or

if the criminal charges are dismissed. It is the State's expectation that DMH will maintain custody over Defendant until the community can be assured that he is no longer a risk of harm to himself or others, and the interests of justice have been served. The State has given DMH access to all discovery materials in this case to aid them in making their determinations.

DATED: May 31, 2019.

Sarah F. George Esq.
State's Attorney

cc: Jessica Brown, Esquire
Sandra Lee, Esquire